

OPINION NO. 70-002

Syllabus:

The position of a village council member and the position of clerk of courts for the county court are incompatible offices and one individual may not hold both positions at the same time.

To: Robert Webb, Ashtabula County Pros. Atty., Jefferson, Ohio
By: Paul W. Brown, Attorney General, January 19, 1970

Your request for my opinion reads as follows:

"Would the following positions be compatible under the Revised Code of the State of Ohio?

"Clerk of Courts for the County Court, and a Village Council Member for a Village within the jurisdiction of said County Court?"

In response to your question, it is necessary to refer to Section 731.12, Revised Code, which states the required qualifications of members of a village legislative authority. Section 731.12, supra, states in part:

"Each member of the legislative authority of a village shall have resided in the village one year next preceding his election, and shall be an elector of the village. No member of the legislative authority shall hold any other public office, be interested in any contract with the village, or hold employment with said village,* * *

"* * * Any member who ceases to possess any of such qualifications or who removes from the village shall forfeit his office."

(Emphasis added.)

The sole issue which must be answered is whether the position of clerk of the county court is a "public office."

Section 1907.101, Revised Code, states the powers and duties of the clerk of a county court. Section 1907.101, supra, states in part:

"(A) The clerk of courts shall be the clerk

of the county court except that the board of county commissioners, with the concurrence of the county court judge or judges, may appoint a clerk for each county court judge. * * *

"Such appointed clerk, before entering upon the duties of his office, shall give bond * * *."
(Emphasis added.)

The clerk of courts of a county with only one clerk of courts is the clerk of the common pleas court, county court, and court of appeals. Since a clerk of courts is a public officer according to State ex rel. v. Brennan, 49 Ohio St. 33 (1892), he necessarily is a public officer in his capacity as clerk of the county court. The fact that a clerk could be appointed for each county court judge in accordance with Section 1907.101, supra, does not, in my view, change the conclusion that a clerk of the county court is a public officer.

Section 1907.101, supra, uses the word "office" which, I conclude, supports my view that under the statute above, a clerk of a county court is a public officer.

In Opinion No. 2066, Opinions of the Attorney General for 1961, and in Opinion No. 561, Opinions of the Attorney General for 1963, my predecessors accepted as authority State ex rel. v. Brennan, supra, which gave approval to a definition of "public officer" as was found in Bradford v. Justice, 33 Ga. 332. State ex rel. v. Brennan, supra, states as follows at page 38:

"It is not important to define with exactness all the characteristics of a public office, but it is safely within bounds to say that where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as denotes duration and continuance, with independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, position so created is a public office."

It is my opinion, therefore, and you are hereby advised that the position of a village council member and the position of clerk of courts for the county court are incompatible offices and one individual may not hold both positions at the same time.